IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.11.2007

CORAM

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN
AND
THE HONOURABLE MR.JUSTICE R.REGUPATHI

Habeas Corpus Petition No.1221 of 2007

Abuthahir @ Abu .. Petitioner

Vs

1. The State of Tamil Nadu
   rep. by Secretary to Government
   Prohibition and Excise Department
   Fort St.George, Chennai-600 009.

2. The Commissioner of Police
   Coimbatore City
   Coimbatore. .. Respondents

Petition filed under Article 226 of the Constitution of India for issue of Writ of Habeas Corpus calling for the records of the 2nd respondent in C.No.36/G/1S/2007 dated 24.4.2007 setting aside the order of detention passed against the detenue/Petitioner and directing the respondents to produce the detenue before this Hon'ble court and setting the detenue/Petitioner herein by name Abuthahir @ Abu S/o Babu at liberty now detained in Central Prison, Coimbatore.

For Petitioner : Mr.V.Senthil Murugan
For Respondents: Mr.N.R.Elango
Addl. Public Prosecutor

O R D E R

(Made by P.D.DINAKARAN,J.)

The petitioner calls in question legality of the order of detention 24.4.2007 passed by the second respondent ordering his detention under the provisions of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug-Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Slum-Grabbers and Video Pirates Act, 1982 (in short "the Act") branding him as a "Goonda".

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2. On the basis of a complaint lodged by one A.Moorthy that on 24.3.2007 at about 13.45 hours, the detenu waylaid him brandishing a knife and snatched his money purse containing Rs.500/- and also threatened the public brandishing knife that they would be killed if they approach them and made them to run on all sides seeking shelter, which resulted in traffic dislocation, the detenu was arrested and a case was registered in Crime No.322/2007 on the file of B6, Peelamedu Police Station, for the offence punishable under Section 392 r/w 397, IPC.

3. The second respondent, taking note of the above case as a ground case and finding that there are three adverse cases in crime Nos.926/2004, 927/2004 and 988/2006 on the file of B3, Kattoor Police Station and B2 R.S.Puram Police Station for the offence punishable under Section 379, IPC, ordered his detention dubbing as a goonda.

4. The main contention of the learned counsel for the petitioner/detenu assailing the order of detention is that while all the adverse cases referred to in the grounds of detention relate to the offence punishable under Section 379 I.P.C. (theft cases), the solitary instance of robbery mentioned in the ground case is not relevant for sustaining the order of detention. The learned counsel, in support of the said plea, relied upon the decision of the Apex Court in DARPAN KUMAR SHARMA alias DHARBAN KUMAR SHARMA v. STATE OF TAMIL NADU [(2003) 1 CRIMES 446].

5. We have heard learned Additional Public Prosecutor on the above said point.

6. As rightly pointed out by the learned counsel for the petitioner, it is evident that the adverse cases mentioned in the grounds of detention do not relate to any law and order problem. But, the offence said to have been committed by the detenu as per the ground case attracts the provisions of the Tamil Nadu Act 14 of 1982.

7.1. In DARPAN KUMAR SHARMA alias DHARBAN KUMAR SHARMA v. STATE OF TAMIL NADU [(2003) 1 CRIMES 446], cited supra, whereunder the order of detention was based on the solitary instance of robbery, the Apex Court held as follows:-

> "... Though in the grounds of detention the detaining authority had stated that by committing this offence in public the detenu created a sense of alarm, scare and a feeling of insecurity in the minds of the public of the area and thereby acted in a manner prejudicial to the maintenance of public order which affected the even tempo of life of the community, but citation of these words in the order of detention is more

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in the nature of a ritual rather than with any significance to the content of the matter. Thus, a solitary instance of robbery as mentioned in the grounds of detention is not relevant for sustaining the order of detention for the purpose of preventing the petitioner from acting in a manner prejudicial to the maintenance of public order."

7.2. That apart, the above ratio laid down by the Apex Court was followed by a Division Bench of this Court, in which one of us (P.D.DINAKARAN, J.) was a party, in MALA v. THE SECRETARY TO GOVERNMENT, PROHIBITION AND EXCISE DEPARTMENT, GOVT. OF TAMIL NADU, CHENNAI, [(2004) M.L.J. (Crl.) 306].

8. Admittedly, in the instant case, the adverse cases relate to the offence of theft punishable under Section 379, IPC and the ground case relates to the offence of robbery punishable under Section 392 IPC and hence, we are of the opinion that the ratio laid down in DARPAN KUMAR SHARMA's case, cited supra, squarely applies to the present case on hand, which is also not disputed by the learned Additional Public Prosecutor.

9. Applying the ratio laid down by the Apex Court in Darpan Kumar Sharma's case, cited supra, we are inclined to set aside the order of detention, Accordingly, the order of detention dated 24.4.2007 is set aside and the Habeas Corpus Petition is allowed. The detenu Abuthahir @ Abu is directed to be released forthwith, unless he is required in any other case.

ATR

Sd/
Asst. Registrar

/true copy/

Sub Asst.Registrar

To

1. The Secretary to Government
   Prohibition & Excise Department
   Secretariat, Chennai 9.

2. The Commissioner of Police
   Coimbatore City
   Coimbatore.

3. The Superintendent
   Central Prison, Coimbatore.

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4. The Public Prosecutor
   High Court, Madras.

5. The Joint Secretary to Govt,
  Public (Law and order)
   Fort St George, Chennai-9.

+ One cc to Mr. V. Senthil Muugan, Advocate SR 68892
JP (co)
sg 03/12/07

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